

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Luke Petrinovic	Team: Squad #13	CCRB Case #: 201609182	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/01/2016 8:00 PM	Location of Incident: 18th Precinct stationhouse	Precinct: 18	18 Mo. SOL 5/1/2018	EO SOL 5/1/2018	
Date/Time CV Reported Wed, 11/02/2016 6:29 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 11/02/2016 6:29 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. CPT Thomas Smith	00000	939495	MTN PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Jude Sciarillo	02994	926093	INT PSS

Officer(s)	Allegation	Investigator Recommendation
A.CPT Thomas Smith	Force: CAPT Thomas Smith detained § 87(2)(b)	
B.CPT Thomas Smith	Discourtesy: CAPT Thomas Smith spoke discourteously to § 87(2)(b)	
C.CPT Thomas Smith	Abuse: CAPT Thomas Smith threatened to arrest § 87(2)(b)	
D.CPT Thomas Smith	Abuse: CAPT Thomas Smith frisked § 87(2)(b)	
E.CPT Thomas Smith	Abuse: CAPT Thomas Smith searched § 87(2)(b)	

### Case Summary

On November 2, 2016, § 87(2)(b) filed this complaint online with the CCRB.

On November 1, 2016, at approximately 8:00 p.m., § 87(2)(b) went alone to the 18<sup>th</sup> Precinct stationhouse, located at 306 West 54<sup>th</sup> Street, in Manhattan. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) met PO Whickers outside the stationhouse and spoke with her. She refused to talk with § 87(2)(b) and walked away. At this time, § 87(2)(b) noticed the executive officer of the 18<sup>th</sup> precinct, CAPT Thomas Smith, outside the stationhouse, and approached him. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) spoke with CAPT Smith, who asked him to come into the stationhouse with him. CAPT Smith obtained § 87(2)(b)'s identification, and walked with him into an office in the stationhouse. SGT Jude Sciarillo, of the Intelligence Division, was in the office, and CAPT Smith asked him to stay and witness their discussion. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Around this time, § 87(2)(b) decided that he wanted to leave, and asked CAPT Smith for his identification. CAPT Smith refused to give § 87(2)(b) his identification, and told him that he had to stay (**Allegation A**). § 87(2)(b) stood up and repeated that he wanted to leave, and CAPT Smith allegedly said, "Sit the fuck down," and told § 87(2)(b) that he would be arrested if he tried to leave (**Allegations B and C**). After that CAPT Smith left the room, but came back around 20 minutes later. When CAPT Smith returned, § 87(2)(b) repeated that he wanted to leave and then stood up. CAPT Smith reached out and felt § 87(2)(b)'s waist, and then lifted up his shirt above him waistband (**Allegations D and E**). After that CAPT Smith left the room.

Officers from Manhattan Borough Investigations arrived at the precinct a short time later. They gave § 87(2)(b) back his identification and interviewed him about his allegation. After that, § 87(2)(b) left the stationhouse.

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

### **Mediation, Civil and Criminal Histories**

- Mediation was offered to § 87(2)(b) over the phone on November 3, 2016, and during his in person interview on November 4, 2016. He rejected mediation, § 87(2)(b).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- A FOIL request for any Notice of Claim related to this incident was sent to the Comptroller's office on December 22, 2016. No response has been received as of the date of this report (Board Review 02).

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint filed by § 87(2)(b) (Board Review 03).
- CAPT Smith has been the subject of eleven prior CCRB allegations across five cases during his eleven year tenure with the NYPD. Three discourtesy allegations against CAPT Smith have been closed as unfounded or unsubstantiated. Two force allegations against CAPT Smith have been closed as exonerated or truncated without an investigation. One frisk allegation against CAPT Smith has been closed as unsubstantiated. There have been two substantiated allegations made against CAPT Smith (Board Review 04):
  - In case 201307074 CAPT Smith was found to have unlawfully entered a home. CAPT Smith also admitted to using the term "bullshit" during the incident. Instructions were recommended by the CCRB for each allegation. The NYPD issued instructions for the discourtesy allegation and no disciplinary action was taken with regards to the entry allegation.

### **Findings and Recommendations**

#### **Allegation A – Abuse of Authority: CAPT Thomas Smith detained § 87(2)(b)**

§ 87(2)(g)

It is not disputed that CAPT Smith prevented § 87(2)(b) from leaving an office in the 18<sup>th</sup> Precinct stationhouse against his will. § 87(2)(b) stated that he asked CAPT Smith for his driver's license and said that he wanted to leave on several occasions. At the time, he felt that CAPT Smith was being antagonistic with him about his allegations against PO Whickers. CAPT Smith repeatedly refused to return § 87(2)(b)'s identification, and told him that he was not permitted to leave (Board Review 05). SGT Sciarillo corroborated § 87(2)(b)'s statement, saying that CAPT Smith told § 87(2)(b) several times that he could not leave until he spoke with investigators about his allegations (Board Review 06).

CAPT Smith acknowledged that he refused to return § 87(2)(b)'s driver's license to him, and stated that he would not have permitted § 87(2)(b) to leave the stationhouse had he tried, although he recalled § 87(2)(b) requesting only once. CAPT Smith explained in his interview that the reason for detaining § 87(2)(b) was that he had to provide a statement to investigators who were on their way to the stationhouse. As it was not CAPT Smith's responsibility to interview § 87(2)(b) he felt that § 87(2)(b) had to be kept there until a superior officer in charge of investigating the allegations arrived so that they could decide what

action to take. CAPT Smith acknowledged that § 87(2)(b) was not under arrest, and had not committed any offense he could have been arrested for (Board Review 07).

A person cannot be detained by law enforcement officers unless they possess a reasonable suspicion that they have committed, are committing, or are about to commit a crime. *People v. DeBour*, 40 NY2d 210 (1976) (Board Review 08); *People v. Delmonico*, 94 AD2d 773 (2d Dept. 1983) (Board Review 09); *People v. Greene*, 135 AD2d 449 (1st Dept. 1987) (Board Review 10).

CAPT Smith admitted that he did not suspect § 87(2)(b) of any crime. The only law enforcement purpose CAPT Smith cited for keeping § 87(2)(b) in the stationhouse after he requested to leave was that he was required to speak with investigators about the allegations he had made. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation B – Discourtesy: CAPT Thomas Smith spoke discourteously to § 87(2)(b)**

**Allegation C – Abuse of Authority: CAPT Thomas Smith threatened to arrest § 87(2)(b)**

§ 87(2)(b) stated that CAPT Smith told him, “Sit the fuck down,” after he stood up and stated that he wanted to leave the stationhouse. CAPT Smith then told him, “If you leave I’m going to arrest you.” CAPT Smith stated that he did not recall making these statements, and that § 87(2)(b) never did anything that he could have been arrested for. SGT Sciarillo could not recall either of the alleged statements.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation D – Abuse of Authority: CAPT Thomas Smith frisked § 87(2)(b)**

**Allegation E – Abuse of Authority: CAPT Thomas Smith searched § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(b) stated that CAPT Smith frisked him around the waistband of his pants after he stood up and told CAPT Smith that he wanted to leave the stationhouse. § 87(2)(b) had a cellphone clipped to the front waistband of his pants. CAPT Smith lifted up his shirt to look at the cellphone.

CAPT Smith stated that he began to suspect that § 87(2)(b) was armed with a gun during his conversation with him. This was based on unconfirmed statements that § 87(2)(b) had made about being a former police officer, as well as an agitated demeanor that § 87(2)(b) adopted when he asked to leave. Additionally, § 87(2)(b) walked towards CAPT Smith in an aggressive manner immediately prior to the frisk with his hand in his pocket, and when CAPT Smith put a hand out to stop him he felt a hard object in the front waistband of his pants, which ended up being a cell phone. Based on these suspicions, CAPT Smith frisked § 87(2)(b) around the waistband of his pants and over the pocket he had his hand in, and lifted up § 87(2)(b)s shirt to view the cell phone clipped to his waistband.

SGT Sciarillo corroborated that CAPT Smith frisked § 87(2)(b) but did not corroborate that § 87(2)(b) had approached CAPT Smith in an aggressive manner. He could not recall if a search occurred, or whether anything about § 87(2)(b)'s appearance indicated that he had a weapon.

A police officer must possess a reasonable suspicion that an individual is armed to justify a frisk, and probable cause to believe that the person is armed to extend the frisk to a search *People v. DeBour*, 40 NY2d 210 (1976) (Board Review 08).

§ 87(2)(g)

---

Squad:

Investigator:	_____	_____	_____
	Signature	Print	Date

Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date